the decision in the principal case is based upon this denial of power is shown by a similar case where the plaintiff who owned a lot on the other side of the street, in the town of Lake, was not allowed to recover against the railroad. *Application of Doss* (1919, Wis.) 174 N. W. 718. In that case the supervisors of the town had express power to make an agreement with railroad companies to share in the expense of changing a grade crossing. The decision in the principal case is sustained by authority. *Northern Pacific Ry. v. State ex rel. Duluth* (1908) 208 U. S. 583, 28 Sup. Ct. 341; *State ex rel. Minneapolis v. St. Paul M. & M. R. R.* (1906) 98 Minn. 380, 108 N. W. 261. The courts have construed the power granted to municipal, as well as to private, corporations strictly. See 1 McQuillin, *Municipal Corporations* (1911) sec. 353. Where no power is granted none will be implied, unless it is necessary to support express powers of the municipality. See *Dailey v. City of New Haven* (1891) 60 Conn. 314, 22 Atl. 945; *Flannagan v. Buxton* (1911) 145 Wis. 81, 129 N. W. 642. There was no necessity in the instant case to imply a power to undertake a duty to contribute to the expense, since the city by its express powers could compel the railroad to construct the crossing at its own expense. *Chicago, M. & St. P. R. R. v. Fair Oaks* (1909) 140 Wis. 334, 122 N. W. 810; *Chicago, B. & Q. R. R. v. Nebraska* (1897) 170 U. S. 57, 18 Sup. Ct. 513.

PLEADING—MISNOMER OF PARTIES—AMENDMENTS.—The Michigan Railway Company leased its road to the Grand Trunk Railway Company, which company operated it under the name of the Grand Trunk Railway System. The plaintiff brought an action for injury to property against the Grand Trunk Railway System. The service of summons was made on the Michigan Railway Company. At the trial the attorney for the Grand Trunk Railway Company entered a plea of the general issue on behalf of the Grand Trunk Railway System and, after the plaintiff's evidence was all in, moved for a directed verdict, which was granted. The plaintiff's motion to amend the pleadings by substituting the name of the Grand Trunk Railway Company for the Grand Trunk Railway System was refused. *Held,* that such refusal was correct, because a misnomer of a defendant is not amendable where the intended defendant was not served and did not make a general appearance. *Parke, Davis & Co. v. Grand Trunk Railway* (1919, Mich.) 174 N. W. 145.

Where the cause of action remains the same, a misnomer of either party may be amended, if service was made upon the intended party. *Martin v. Martin* (1897) 95 Va. 26, 27 S. E. 810; *Maher v. Interstate Switch Co.* (1897) 58 Kan. 817, 51 Pac. 286. By the weight of authority, a plaintiff may amend his action so as to change the capacity in which he sues from individual to representative, or *vice versa. Johnson v. Phoenix Bridge Co.* (1910) 197 N. Y. 316, 90 N. E. 953; *Mann v. Marshall* (1911) 76 N. H. 162, 80 Atl. 336. *Contra, Lower v. Segal* (1897, Sup. Ct.) 60 N. J. L. 99, 36 Atl. 777; *Walker v. Lansing Traction Co.* (1906) 144 Mich. 685, 108 N. W. 90. The defendant is likewise so privileged. *Hutchinson v. Tucker* (1878) 124 Mass. 240; *Tighe v. Pope* (1878, N. Y. Sup. Ct.) 16 Hun, 180. Similarly, an action brought by an individual may be changed by an amendment into one by a partnership, or *vice versa. Hodges v. Kimball & Farnsworth* (1878) 49 Iowa, 577; *York v. Nash* (1903) 42 Ore. 321, 71 Pac. 59; *contra, Blackwell v. Pennington & Sons* (1880) 66 Ga. 240. Also an amendment charging defendants as partners instead of as a corporation may be allowed. *Haggerty v. Strong* (1898) 10 S. D. 585, 74 N. W. 1037; *Teets v. Snider Heading Mfg. Co.* (1905) 120 Ky. 653, 87 S. W. 803. The principle of the instant case is clearly correct; but it would seem that the fact that the attorney who entered the plea was the general attorney for the Grand Trunk Company, and that the Grand Trunk Company operated under the name of the Grand Trunk System, which did not exist as a corporation, would be sufficient to

establish a *prima facie* agency for this particular action between this attorney and the company, and thus constitute a general appearance for the company. A general appearance cures all defects in service where the court would have had jurisdiction if the service had been perfect. *Redmond v. Peterson* (1894) 102 Calif. 595, 36 Pac. 923; *Baker v. Union Stock Yards Nat. Bank* (1902) 63 Neb. 801, 89 N. W. 269.

PLEADING—WRONGFUL DEATH—STATUTORY PERIOD—CONDITION PRECEDENT OR LIMITATION PERIOD.—Suit was brought November 28, 1910, under a wrongful death statute requiring that action thereon must be brought within one year after the death. The declaration alleged that the injury resulting in death occurred June 27, 1909, but did not allege the date of the death, nor that the action was commenced within one year after the death. *Held,* that the declaration did not state a cause of action. *Hartray v. Chicago Railways* (1919, Ill.) 124 N. E. 849.

One line of cases holds that a statutory requirement of this sort is a limitation period to be set up in the defendant's pleading. *Sharrow v. Inland Lines, Ltd.* (1915) 214 N. Y. 101, 108 N. E. 217; *Chiles v. Drake* (1859, Ky.) 2 Met. 146, 74 Amer. Dec. 406. But most courts treat such a provision as a limitation or condition attached to the right. *De Martino v. Sieman* (1916) 90 Conn. 527, 97 Atl. 765; *Korb v. Bridgeport Gas Light Co.* (1917) 91 Conn. 395, 99 Atl. 1048; *The Harrisburg* (1886) 119 U. S. 199, 7 Sup. Ct. 140; *Boston and Maine R. R. v. Hurd* (1901, C. C. A. 1st) 108 Fed. 116, 47 C. C. A. 615; *Hamilton v. Hannibal and St. Joseph R. R.* (1888) 39 Kan. 56, 18 Pac. 57. These cases reason since there is no action at common law for wrongful death, then where a statute creates a right of action, a limitation in the statute is inherently a part of the right of action. In this respect the limitation differs from the ordinary statute of limitations, which operates to bar a preëxisting right. See Tiffany, *Death by Wrongful Act* (2d ed. 1913) sec. 121. According to this view, in order to avail himself of the right, a plaintiff must affirmatively allege that his action was commenced within the period provided. *Louisville and Nashville R. R. v. Chamblee* (1910) 171 Ala. 188, 54 So. 681. When the plaintiff fails to do this, his declaration is demurrable. *Lapsley, Admtx. v. Public Service Corporation of New Jersey* (1908, Sup. Ct.) 75 N. J. L. 266, 68 Atl. 1113. The principal case follows the majority rule, and is sound in result. For the effect of a foreign statute of limitations, see (1918) 27 YALE LAW JOURNAL, 1078.

PROCEDURE—SERVICE BY PUBLICATION—IDEM SONANS.—The plaintiff sued to foreclose his mortgage on the defendant's property, service in the suit being by publication. The defendant contended that the court failed to obtain jurisdiction because of defective notice. The published notice named the defendant as "Asa W. Winegar," whereas his name was "Aseph W. Winegar." There was evidence that he had frequently been called "Asa" and that his name so appeared in the previous directory. *Held,* that there was not sufficient variation in the sound of the two names to make the service void. *Bennett v. Winegar* (1919, Neb.) 174 N. W. 512.

The courts are practically unanimous in applying the doctrine of *idem sonans* when called upon to determine the validity of default judgments rendered upon personal service. *Bloomfield R. R. v. Burress* (1882) 82 Ind. 83; *Walsh v. Kirkpatrick* (1866) 30 Calif. 202. But where service was made by publication, there is considerable conflict of opinion as to whether or not the doctrine should be applied. The more recent authorities tend to support the principal case. *Cf. Puckett v. Hetzer* (1910) 82 Kan. 726, 109 Pac. 285; *cf. Davison v. Bankers' Life Ass'n* (1912) 166 Mo. App. 625, 150 S. W. 713. *Contra,*